

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES HAYDEN,

CASE NO: 1:17CV2635

Plaintiff,

v.

2K GAMES, INC., et al.,

Defendants.

Deposition of JAMES HAYDEN

Cleveland, Ohio

Wednesday, October 30, 2019 - 9:04 a.m.

Reported by:

Angela Nixon, RMR, CRR

Job No.: 26345

1 single person you ever inked?

2 A. No.

3 Q. Just in the past -- this is 2019, approximately
4 how many people have you inked so far this year?

5 A. I don't know. It's hard to say.

6 Q. Can you give me any approximation for how many
7 people a week, three a week, ten a week, 20 a week?

8 A. Three.

9 Q. And is it fair to say that you -- in your mind,
10 have you inked a lot of people in your career?

11 MR. MCMULLEN: Objection.

12 A. I don't know, in comparison I don't know.

13 Q. Well, in -- from your point of view, do you think
14 you've only inked a few people, or are you thinking in 22
15 years you've inked a lot of people?

16 MR. MCMULLEN: Objection.

17 A. A nice amount.

18 Q. So when a client comes in for a tattoo, can you
19 just walk me through the typical process you would go
20 through in deciding what to ink on that person?

21 MR. MCMULLEN: Objection.

22 A. Rephrase your question for me, please.

23 Q. Sure. So when someone comes in and says that
24 they'd like a too -- tattoo, can you walk me through how
25 the process works from when they walk in the door to when

1 they leave with their tattoo?

2 A. It could be an extensive process, it could be
3 quick. Somebody would usually come in with an idea and
4 we'd go from there.

5 Q. Okay. So if someone comes in with -- with an
6 idea, what would happen next?

7 MR. MCMULLEN: Objection.

8 A. In my case I would draw it on with a Sharpie, and
9 if they like it we do it.

10 Q. And would they get to see the Sharpie design
11 before you inked it on them?

12 A. Yes.

13 Q. Would they get to approve the design before you
14 inked it on them?

15 MR. MCMULLEN: Objection.

16 A. Yes.

17 Q. If you showed a client a Sharpie sketch, do they
18 ever say can you make some changes in it and redo it before
19 you ink it on them?

20 A. Sometimes.

21 Q. So does the client have the final say in the
22 tattoo that's inked on their body?

23 A. Yes.

24 Q. Is that because it's a -- it becomes a permanent
25 part of their body?

1 MR. MCMULLEN: Objection.

2 A. Yes.

3 Q. Would you agree that tattoos are personal?

4 MR. MCMULLEN: Objection.

5 A. I think so.

6 Q. Tattooing's been around for a long time, right?

7 A. Yes.

8 Q. Am I right that a lot of modern tattoos are based
9 on prior designs?

10 MR. MCMULLEN: Objection.

11 A. No.

12 Q. Have you ever heard of tribal tattoos?

13 A. Yes.

14 Q. What are tribal tattoos?

15 A. It's just a style of tattooing.

16 Q. What does the word tribal refer to?

17 MR. MCMULLEN: Objection.

18 A. Typically a dark design of some sort.

19 Q. In your experience, does the term tribal often
20 refer to Maori or designs inspired from that culture?

21 MR. MCMULLEN: Objection.

22 A. I'm not sure.

23 Q. Okay. When -- is it true that people often get
24 tattoos depicting things that have personal significance to
25 them?

1 MR. MCMULLEN: Objection. Can you read that
2 question for us, please?

3 (Whereupon the court reporter read back the
4 previous question.)

5 A. Sometimes.

6 Q. Do people sometimes get tattoos to commemorate
7 life events -- events?

8 A. Sometimes.

9 Q. Do people sometimes get tattoos to honor
10 important people in their life?

11 A. Sometimes.

12 Q. Do people sometimes get tattoos of -- of quotes
13 that are important to them?

14 A. Sometimes they do.

15 Q. Would you agree that tattoos can be a form of
16 self expression --

17 MR. MCMULLEN: Objection.

18 Q. -- for the client?

19 MR. MCMULLEN: Excuse me, I'm sorry, forgive me.
20 Can you read the question back?

21 (Whereupon the court reporter read back the
22 previous question.)

23 MR. MCMULLEN: Objection to that question. You
24 can answer if you're able.

25 A. I don't know.

1 you that you needed the permission of the person who
2 tattooed you before photographs of you could be taken?

3 A. Rephrase that question if you could.

4 Q. Sure. When you got your tattoos, did any
5 tattooist ever tell you that you needed to get their
6 permission before you appeared showing your tattoos in
7 photographs or television or video games or anything?

8 MR. MCMULLEN: Objection. You can answer if
9 you're able.

10 A. I don't remember. I don't think so.

11 Q. Have you ever sought permission from any
12 tattooist before posting pictures of yourself with your
13 tattoos?

14 A. No.

15 Q. Have you ever gotten the permission of any
16 tattooist before appearing in any videos or commercials
17 showing your tattoos?

18 MR. MCMULLEN: Objection.

19 A. Could you say that again?

20 Q. Can you read it back?

21 (Whereupon the court reporter read back the
22 previous question.)

23 A. No.

24 Q. Have you appeared in videos or commercials
25 showing your tattoos?

1 Q. Am I right that after a person gets a tattoo they
2 can have that tattoo touched up by a different tattooist if
3 they want?

4 MR. MCMULLEN: Objection.

5 A. I guess so.

6 Q. You don't try to prevent your customers from
7 doing what they want with their tattoos once they leave the
8 shop, right?

9 MR. MCMULLEN: Objection.

10 A. What do you mean prevent them?

11 Q. Well, you don't tell customers that they need to
12 go back to you if they ever wanted to touch up or alter a
13 tattoo you inked, right?

14 MR. MCMULLEN: Objection.

15 A. Tell customers to do what?

16 Q. You don't tell customers that they need to come
17 back to you if they ever wanted to touch up or alter a
18 tattoo you inked, right?

19 MR. MCMULLEN: Objection.

20 A. No, I'm not forcing clients to do that.

21 Q. And they don't need your permission to alter or
22 touch up a tattoo you inked, right?

23 MR. MCMULLEN: Objection, calls for a legal
24 conclusion.

25 A. Okay, I don't know.

1 Q. Well, you don't tell them that, right?

2 A. No.

3 Q. And you don't tell tattoos -- excuse me, you
4 don't tell clients that they need your permission to have a
5 tattoo removed, right?

6 MR. MCMULLEN: Objection.

7 A. No.

8 Q. And a client doesn't need permission from the
9 original tattooist to tattoo over a tattoo somebody else
10 inked, right?

11 MR. MCMULLEN: Objection.

12 A. I don't know.

13 Q. Well, do you tell people you can't put a new
14 tattoo over an old tattoo without the permission of the
15 original tattooist, you ever tell that to people?

16 A. I don't remember ever telling anybody that.

17 Q. Isn't it true that because a tattoo is part of
18 someone's body, you expect when they leave your shop that
19 they're going to do whatever they want with it?

20 MR. MCMULLEN: Objection.

21 A. Say it again. Rephrase that.

22 MS. CENDALI: Can you say it back please.

23 (Whereupon the court reporter read back the
24 previous question.)

25 MR. MCMULLEN: Same objection.

1 A. Do I expect -- I don't know. No, I guess, no.

2 Q. Well, do you -- is once you tattoo someone often
3 the last time you see them?

4 MR. MCMULLEN: Objection.

5 A. Sometimes.

6 Q. And do you ever say to your clients, hey, there
7 are limitations on what you can do with your tattoo, you
8 need to come back to me?

9 MR. MCMULLEN: Objection.

10 A. No.

11 Q. I'll show you what's been marked as Exhibit 2.
12 Can you identify that document?

13 A. Looks like some tattoos and some pictures of me.

14 Q. Is that from your Instagram?

15 A. Looks like it, yes.

16 Q. Did you post that material?

17 A. Yes.

18 Q. Are these tattoos that you had inked?

19 MR. MCMULLEN: Objection.

20 A. Some of them.

21 Q. Are some of them of other people's tattoos?

22 A. Yes.

23 Q. Why did you include images of other people's
24 tattoos?

25 A. Because I like them.

1 they were.

2 Q. You don't remember their names?

3 A. No.

4 Q. Other than yourself, was anyone else present who
5 was not with Mr. James?

6 A. I think my brother was there, and I think Dino
7 was there, Bernadino Tovanche was there.

8 Q. Anyone else?

9 A. No.

10 Q. And was Mr. James a professional basketball
11 player at that time?

12 A. I think so.

13 Q. Did you understand that he was playing for the
14 Cleveland Cavaliers?

15 A. Yeah.

16 Q. Isn't it true that he started playing with the
17 Cavs in 2003?

18 A. I think so.

19 Q. Do you recall that he was Rookie of the Year in
20 2004?

21 A. I don't remember that.

22 Q. Are you a basketball fan?

23 A. From afar, yes.

24 Q. Do you ever go to basketball games?

25 A. Yes.

1 Q. And you knew that LeBron James appeared in public
2 basketball games, right?

3 A. NBA, ESPN, yeah.

4 Q. I mean you knew that -- that -- that basketball
5 playing games are played in an -- in an arena and fans come
6 and watch them, right?

7 A. Typically.

8 Q. And you were one of those people, right?

9 A. One of those people who what?

10 Q. Would sometimes go to an arena and watch a Cavs
11 game?

12 A. Sometimes.

13 Q. And you knew that professional basketball games
14 are often on television, right?

15 A. Sometimes they are.

16 Q. And you knew that -- so when you inked Mr. James,
17 you knew that he was often on television, right?

18 A. Yes.

19 Q. And when you inked him you knew that he often
20 appeared in advertising and merchandise, right?

21 MR. MCMULLEN: Objection.

22 A. I didn't know that.

23 Q. Did you ever -- when you went to a game did you
24 ever see T-shirts and things like that being sold with the
25 players' likenesses?

1 Q. Did you understand that Mr. Green was a
2 professional basketball player when you inked him?

3 A. Yes.

4 Q. Let me show you what's been marked as Exhibit 9.
5 Is Exhibit 9 a photograph of Mr. Green's arm showing a
6 tattoo you inked on him?

7 A. Looks like it.

8 Q. Do you refer to that as the flame tattoo?

9 A. Yes.

10 Q. Can you approximate what year you inked this on
11 him?

12 A. I can't remember when I did this.

13 Q. Was it after 2010 or earlier?

14 A. Maybe after. I can't remember.

15 Q. But it was after you had inked Mr. James, right?

16 A. Yes.

17 Q. And it was -- and this was -- the flame tattoo is
18 the first one you inked on Mr. Green, correct?

19 A. I don't know if it's the first one. I'm not
20 sure.

21 Q. What -- what do you think might have been the
22 first one?

23 A. He has a few of them. I don't know which one I
24 did first. I'm not sure.

25 Q. Okay. But the point is, is it fair to say that

1 last tattoo you inked on Mr. Green was?

2 A. Symbols on the inside of the arm.

3 Q. And when, approximately, did you ink that design?

4 A. I can't remember.

5 Q. Was it in the past five years?

6 A. Yes.

7 Q. Was it in the past two years?

8 A. Past five.

9 Q. Was that the last time you had any communications
10 with Mr. Green?

11 A. No.

12 Q. Is Mr. Green your friend?

13 A. Yes.

14 Q. When was the last time you had any communications
15 with Mr. Green?

16 A. A few weeks ago possibly through Instagram.

17 Q. Okay. And what happened in that communication?

18 A. Fire emojis, good shot.

19 Q. I'm sorry, could you explain that?

20 A. Emojis, fire, good shot.

21 Q. Oh, so you were saying that he made a good shot
22 during your basketball game?

23 A. Yes.

24 Q. And do you comm -- communicate other than through
25 Instagram with Mr. Green via text or e-mails?

1 A. No, not too much.

2 Q. But you've done that sometimes, though, right?

3 A. Yeah.

4 Q. Have you produced all communications with
5 Mr. James, Mr. Green and Mr. Thompson?

6 A. I think so.

7 Q. Have you produced all communications with any
8 representatives of them?

9 A. Yes.

10 Q. Have you ever spoken to Mr. James or any of his
11 representatives about this lawsuit?

12 A. Randy Mims.

13 Q. Who's Randy Mims?

14 A. He's -- I think he's LeBron's agent, one of --
15 one of his agents.

16 Q. And when did you speak to Mr. Mims?

17 A. A few months ago.

18 Q. Did you reach out to him, did he reach out to
19 you?

20 A. I reached out to him.

21 Q. Why?

22 A. It was regards to a contract with Warner
23 Brothers.

24 Q. Did you have a conversation with him about this
25 lawsuit?

1 A. I forgot.

2 Q. And how was it decided -- did Mr. Green say to
3 you what symbols he wanted inked on him?

4 A. Yes.

5 Q. What did he say?

6 A. He told me what symbols he wanted. I forgot what
7 symbols they were.

8 Q. And then you did that then, correct?

9 A. Yes.

10 Q. Were there any other tattoos that you inked on
11 Mr. Green?

12 A. I can't remember.

13 Q. How did it come about that you first inked
14 Tristan Thompson?

15 A. How did it come about? He came into the shop to
16 get a tattoo.

17 Q. It hadn't been set up in advance?

18 A. I don't remember how it was set up.

19 Q. Did you know Mr. Thompson before he came into the
20 shop?

21 A. No.

22 Q. Did anyone come in with him?

23 A. I can't remember.

24 Q. Let me show you what's been marked as Exhibit 11.
25 Is this a photograph of Mr. Thompson's front chest

1 depicting a tattoo you inked on him?

2 A. Looks like it.

3 MR. MCMULLEN: Excuse me, counsel, did you say
4 this is Exhibit 11?

5 MS. CENDALI: Yes, Defendant's Exhibit 11.

6 MR. MCMULLEN: Thank you.

7 BY MS. CENDALI:

8 Q. And did you ink the whole tattoo, or was there
9 any preexisting ink on him?

10 A. I inked the whole tattoo.

11 Q. And you understood -- was this tattoo inked in
12 2012?

13 A. Maybe.

14 Q. Was it approximately that time?

15 A. I think so.

16 Q. You understood that he was a professional
17 basketball player at that time, right?

18 A. Yes.

19 Q. And you knew that he had signed an \$82 million
20 contract with the Cleveland Cavaliers, right?

21 MR. MCMULLEN: Objection.

22 A. I didn't know that.

23 Q. Well, you knew he was a celebrity, right?

24 MR. MCMULLEN: Objection.

25 A. I didn't know that.

1 Q. Well, you knew he was a famous basketball player,
2 right?

3 MR. MCMULLEN: Objection.

4 A. I didn't know that.

5 Q. Did you think that Tristan Thompson was a famous
6 basketball player?

7 MR. MCMULLEN: Objection.

8 A. I think he is now.

9 Q. And you don't think he was in 2012?

10 MR. MCMULLEN: Objection.

11 A. I don't know.

12 Q. Well, you knew that he appeared on television,
13 right?

14 MR. MCMULLEN: Objection.

15 A. Yes.

16 Q. So how much did Mr. Thompson pay you to ink
17 the my brother's keeper tattoo?

18 A. I can't remember.

19 Q. And other than it being less than \$600, can you
20 approximate in any way how much you charged him?

21 MR. MCMULLEN: Objection.

22 A. No, I can't.

23 Q. And if I came in today with my brother and asked
24 you to ink a tattoo on him like that, you couldn't give me
25 an estimate in advance, right?

1 Q. I'm not asking if you've been there. Are you
2 aware that that painting exists?

3 A. I think it exists through photographs maybe.

4 Q. Okay. And when you inked on Mr. Thompson these
5 two fingers to these two hands with their finger tips
6 touching, were you inspired by Michelangelo?

7 MR. MCMULLEN: Objection.

8 A. I'm not sure what I was inspired by at the time.

9 Q. Were you aware at the time that you inked this
10 that Michelangelo's -- that Michelangelo had depicted hands
11 in a similar style?

12 MR. MCMULLEN: Objection.

13 A. Possibly.

14 Q. Have you ever told anyone, at the time a tattoo
15 was inked, that the NBA players needed your permission
16 before their likeness could be shown with their tattoos?

17 MR. MCMULLEN: Objection.

18 A. Restate that question, please.

19 Q. When you were inking the NBA players, Mr. Green,
20 Mr. Thompson, Mr. James, did you ever tell anyone that your
21 permission would be needed before their likeness could be
22 depicted showing their tattoos?

23 MR. MCMULLEN: Objection.

24 A. No.

25 Q. Is Mr. Thompson a friend of yours?

1 sure how they're doing it. I'd like to find out more about
2 that. I'm a tattoo artist.

3 Q. Right. But you say that the problem you have
4 with avatars is that that's computer generated, I'm asking
5 you --

6 A. My images are -- that I have copyrights to are --
7 are computer generated.

8 Q. Right. But are -- aren't computers used to
9 generate how people look in movies and photographs too?

10 MR. MCMULLEN: Objection.

11 A. I don't know.

12 Q. You don't know?

13 A. No, I don't know.

14 Q. Have you ever asked a client to sign a copyright
15 agreement before you inked them?

16 A. A client to sign a copyright agreement before I
17 ink them?

18 Q. Yes.

19 A. No.

20 Q. Have you told the players involved in this case
21 that when you -- let me rephrase.

22 When you inked the tattoos on Mr. James,
23 Mr. Thompson and Mr. Green, did you tell the players that
24 you were claiming copyrights of the tattoos you put on
25 their bodies?

1 MR. MCMULLEN: Objection.

2 A. No.

3 Q. And when you inked Mr. Thompson, Mr. Green and
4 Mr. James, you didn't tell them that they would need your
5 permission to appear in video games showing their tattoos,
6 right?

7 A. No.

8 Q. Is it fair to say that in the tattoo industry,
9 that when a client leaves the tattooist's parlor he or she
10 can go about their life as they wish without needing to run
11 back to the tattooist for permission?

12 MR. MCMULLEN: Objection.

13 A. I guess so.

14 Q. So I believe you said you've gone to NBA
15 basketball games and you've watched them on TV from time to
16 time, is that right?

17 A. Yes.

18 Q. And I -- I believe you said that you didn't
19 actually play the video games yourself at issue in this
20 case but that you watch others play them for you, to show
21 you what they look like, is that fair?

22 MR. MCMULLEN: Objection.

23 A. I've held the -- the thing before, but it's not
24 something I -- it's not in my bag.

25 Q. But you looked into how the players were depicted

1 sure whether this was it?

2 MR. MCMULLEN: Objection.

3 A. This -- this wasn't -- this doesn't look like the
4 one from ten years ago.

5 Q. Okay. And can you describe for me what the one
6 from ten years ago looked like?

7 A. I cannot. I don't remember what it looked like.
8 Doesn't look like this, though, looked more like a -- like
9 a regular playing card.

10 Q. You can't remember -- you can't describe what it
11 looked like, but you knew it didn't look like this, is that
12 your testimony?

13 MR. MCMULLEN: Objection.

14 A. Yes, basically.

15 Q. Now, besides your communications with Randy Mims,
16 have you ever had communications with anyone else about
17 this lawsuit?

18 A. No.

19 Q. Before you brought this lawsuit, did you discuss
20 suing Take-Two from anyone other than your attorneys?

21 A. Ask -- ask me that question again.

22 Q. Sure. Before you brought this lawsuit, did you
23 discuss the possibility of suing Take-Two with anyone other
24 than your attorneys?

25 A. No.